

**FRANK'S
ATTORNEYS
PLAN NEXT
MOVE TO
PREVENT
EXECUTION**

Louis Marshall, New
York

Lawyer, Will
Represent

Frank Before United
States

Supreme Court

JUSTICE LAMAR WILL
BE ASKED TO
CERTIFY

Judge Newman, Who
Denied

Writ of Habeas
Corpus, in

Formal Opinion Sets
Out

Reasons for So Doing

Denied their Application for a Writ of Habeas Corpus for Leo M. Frank by Judge W. T. Newman, of the United States District Court, who also refused to certify to a “reasonable cause” for Appeal, the Counsel for Frank on Tuesday were deliberating on their next move in the fight for the condemned man’s life.

While the effort to get the Case before the United States Supreme Court has not been abandoned, it was announced Tuesday that none of Frank’s lawyers in Atlanta will go to Washington for that purpose, as they had intended Monday, but will forward the papers in the Case to Louis Marshall, the New York lawyer associated with Attorneys Henry Peeples and Harry Alexander in their previous appearance before the Supreme Court, and Mr. Marshall will go to Washington at once and present the Case in its new Status to the individual Justices.

Following the same procedure as when they undertook to have the Supreme Court Review the refusal of the State Supreme Court to set aside the Verdict, Mr. Marshall will go before Justice Lamar with an Application for an Appeal from Judge Newman’s refusal to grant the Application for a Writ of Habeas Corpus. Should Justice Lamar decline to grant this Appeal, Mr. Marshall will probably go before Justice Holmes, or Justice Hughes, with the same Application. Should it be denied again, Mr. Marshall may then go before the entire bench of the United States Supreme Court.

If the Application for an Appeal is granted, the Case will go immediately on the calendar of the Supreme Court, and this will automatically stay the execution of Frank’s death sentence.

Otherwise, the State Courts will not take official notice of the efforts to get the Case before the Supreme Court, and only the intervention of the Governor can prevent the execution on the date fixed, January 22.

The official opinion of Judge Newman, which becomes a part of the Record in the Case and will be forwarded to Attorney Louis Marshall, was handed down late Monday afternoon.

NEWMAN'S OPINION.

The opinion, in which the Court tells why he refused the Application for a Writ, and refused to certify to the existence of a reasonable cause for an Appeal, follows in full:

"It is well settled, and indeed the Act of Congress with Reference to the issuance of Habeas Corpus by this Court provides that the Court shall issue the Writ 'unless it appears from the petition that the party is not entitled thereto.' So that, unless it appears from this Application and from the exhibit is attached thereto, and the Records referred to therein that relief could be granted if the Writ issued, the Writ should be denied."

"I do not think the Petition, or Application, and the exhibits and Records referred to, make a Case wherein this Court can properly allow the issuance of the Writ. All of the papers presented show clearly that this defendant was tried in the Superior Court of the State and motion for a new trial was made and overruled, and the Case was taken to the Supreme Court of the State, and the judgment of the Lower Court was affirmed. It further shows that afterwards a motion was made to set aside the Verdict, and that that motion was denied, and it was then taken to the Supreme Court of the State and affirmed for the reasons stated in the opinion by the Supreme Court. It further shows that an Application for a Writ of Error to the Supreme Court of the United States was made to Mr. Justice Lamar, and to Mr. Justice Holmes, of the Supreme Court of the United States."

"In a Memorandum opinion filed by Mr. Justice Lamar in denying the Application for Writ of Error, he said this, among other things:"

"The laws of the several States fix

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a method in which, and a time at which, to attack Verdicts because of anything occurring during the progress of the trial, including disorderly conduct of the crowd in and out of the Court Room and the fact that the defendant was not present when the Verdict was rendered. It is for the State to determine whether a Verdict rendered in the absence of the defendant can be attacked by a motion to set aside the Verdict, or by a motion for a new trial, of both. The laws of the State also determine whether the Denial of one of these motions will prevent the defendant from subsequently making the other. The decision of the Supreme Court of Georgia in this Case holds that, under the laws of the State where a motion for a new trial was made and denied, the defendant could not thereafter make a motion to set aside the

Verdict on the ground that he was not present when it was returned by the jury. That rule involves a matter of State practice and presents no Federal question. The Writ of Error is therefore denied.’”

Mr. Justice Holmes, speaking in his Memorandum denying the Application for the Writ of Error to the Supreme Court of the United States, from the last decision of the Supreme Court of Georgia, said:

“‘I understand from the Headnote and the opinion that the Case was finished when the previous motion for a new trial was denied by the Supreme Court and, as Cases must be ended at some time, that apart from any question of waiver, the second motion came too late. I think I am bound by this decision even if it reverses a long line of Cases and the Counsel for the Petitioner were misled to his detriment, which I do not intimate to be my view of the Case.’”

“Subsequently the matter was presented to Chief Justice White, who referred the matter, apparently, to the entire Court, and the motion for the Writ of Error was denied by the entire Court.”

“How this Court could be justified in issuing this Writ when this Record is disclosed to it, I am unable to see. If this Writ should issue, notwithstanding all that has occurred, and this Applicant should be brought into Court, the only thing the Court here could do would be to hear evidence and determine whether this Applicant had been denied the equal protection of the laws and due process of law, and consequently should be discharged. It seems to me that this would be the exercise by this Court of Supervisory power over the action of the State Courts in a manner not warranted by the Constitution of the Laws of United States. Also the Court would be considering the matter as proper for hearing and decision here in the face of the decisions of two Justices of the Supreme Court—indeed of the entire Court—to the effect, so stated, that no Federal question remained for consideration or now exists in the Case.”

"I am not aware of any precedent for such action in a Case like this on the part of this Court, and none has been referred to by Counsel for the Application who have so ably presented and argued this Case."

"No question whatever is made about the jurisdiction of the Court trying the Case originally and subsequently reviewing it on Writ of Error."

"Believing from the petition itself, therefore, that the Applicant is not entitled to the Writ of Habeas Corpus or to the relief prayed, the Application for the same is denied. This 21st day of December, 1914."

"WILLIAM T. NEWMAN,"

"U. S. Judge."

Attorney Marshall Has Not Reached Washington

BY RALPH SMITH.

WASHINGTON, Dec. 22.—Although Louis Marshall, of New York, Counsel for Leo M. Frank, is expected to participate in the motion for a Review of Judge Newman's decision, neither he nor any other person connected with the Case had reached Washington at 2 o'clock this afternoon.

Persons here familiar with the Frank Case are at a loss to understand just what course will be followed in this latest move.
